Supreme Court, U.S.
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No. 85-1101

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1985

BURBANK-GLENDALE-PASADENA
AIRPORT AUTHORITY,
Petitioner,

vs.

KENNETH L. BAKER, *et. al.*,
Respondents.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF CALIFORNIA AND SUGGESTION THAT THE VIEWS OF THE FEDERAL AVIATION ADMINISTRATION BE SOUGHT

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TABLE OF CONTENTS

	Page
ARGUMENT	1

TABLE OF AUTHORITIES CITED

City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) 2

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Petitioner Burbank-Glendale-Pasadena Airport Authority respectfully submits to this Court its Reply to Respondents' Brief in Opposition to Petition for Certiorari to the Supreme Court of California, and respectfully suggests that the issues raised by the Petition so directly impact upon the functions and authority of the Federal Aviation Administration with respect to jet aircraft noise regulation that the Solicitor General's office should be asked to present the government's views on the instant Petition.

The jurisdiction of this Court to review the decision below is beyond doubt. The California Supreme Court based its holding that public airports are continuously liable for the by-products of jet aircraft operations on the premise that "Federal preemption of local regulation of airport noise is not absolute." 39 Cal.3d at 872. The issue thus presented is not whether all damage awards against airport proprietors are unconstitutional, but whether the decision below extends improperly that liability, thus permitting state regulation to intrude into preempted areas of aircraft noise control and unduly burden interstate commerce. Indeed, as respondents are forced to admit, petitioner raised this very issue when arguing below that if airport operations constitute a nuisance at all, then they must be classified as permanent. (Respondents' Brief In Opposition at pp. 7-8).

The respondents' opposition brief frames in bold relief improper and intrusive state regulation of airport noise that will result if the decision below is not reviewed. While respondents assert that the decision below will not interfere with areas protected from parochial interference, they contend, nevertheless, that because airports are "free to control air traffic patterns, operational procedures, or curfews", their decisions will subject them to local scrutiny and liability. (Respondents' Brief In Opposition at pp. 16-17). Yet, these are precisely the type of operational decisions this Court found exempt from local regulation in *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 636-39 (1973), and which the Federal Aviation Administration ("FAA"), not airport proprietors, should control.

The Airport Authority noted in its Petition that the FAA — the entity responsible for regulating the national system of air transportation, including jet aircraft noise control — has taken the position in other pending litiga-

tion that court action aimed at reversing operational decisions of airport proprietors is preempted. (Petition at p. 13). The FAA's position in that litigation evidences a view of the scope of federal preemption that is much broader than respondents are willing to concede.

The FAA's views concerning its responsibility for and control over jet aircraft noise control, and its interest in application of the principles announced in *City of Burbank,* are matters which this Court should consider. The Airport Authority respectfully suggests that a formal presentation of those views in these proceedings would be valuable to the Court in assessing the nature and scope of the impact of the decision below on the national air transportation system and the appropriateness of granting this Petition. Accordingly, the Airport Authority requests that the Court seek the views of the FAA on these issues and that the Solicitor General be invited to file an *Amicus Curiae* brief addressing the question of whether Certiorari should be granted.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On January 28, 1986, I served the within Respondents' Brief in Opposition to Petition for Certiorari, etc., in re: "Burbank-Glendale-Pasadena Airport Authority v. Kenneth L. Baker *et al.*" in the United States Supreme Court, October Term, 1985, No. 851101, on the Attorneys in said action, by placing 3 copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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Amicus Curiae
All parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on January 28, 1986, at Los Angeles, California

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